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SUPREME COURT  
STATE OF WASHINGTON  
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BY RONALD R. CARPENTER

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SUPREME COURT  
OF THE STATE OF WASHINGTON

NOEL PROCTOR,

Appellant,

v.

ROBERT "FORD" HUNTINGTON  
and CHRISTINA HUNTINGTON,  
husband and wife, and the marital  
community therein,

Respondents.

No. 823260

RESPONDENT  
HUNTINGTONS'  
STATEMENT OF  
ADDITIONAL AUTHORITIES  
[RAP 10.8]

The Respondents, Robert "Ford" Huntington and Christina Huntington, hereby submit the following Additional Authority to the Court pursuant to RAP 10.8. The Respondents submit this Authority on the basis that Appellant Noel Proctor claims that the Huntingtons were compelled to raise RCW 7.28.160 as a counterclaim to his ejectment and quiet title claims. On the other hand, the Huntingtons contend that the betterment statute is not a compulsory counterclaim and, regardless, RCW 7.28.160 did not apply because: (1) the Huntingtons are not claiming a right to Proctor's property under "color of title" as required by RCW 7.28.160; and, (2) RCW 7.28.160 only permits "setoff" to the extent that

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the plaintiff is seeking damages—the statute does not authorize the defendant to collect damages as an independent cause of action.

Accordingly, the Huntingtons hereby submit the following additional authority:

- RCW 7.28.160 provides: “In an action for the recovery of real property upon which permanent improvements have been made or general or special taxes or local assessments have been paid by a defendant, or those under whom he claims, holding in good faith under color or claim of title adversely to the claim of plaintiff, the value of such improvements and the amount of such taxes or assessments with interest thereon from date of payment must be allowed as a counterclaim to the defendant.”
- *Wallace v. Wallace*, 112 Wash. 14, 191 P. 793 (1920); *Payn v. Hoge*, 21 Wn.2d 32, 939 (1944) (Defendant claiming under RCW 7.28.160 must be holding property under “color or claim of title.”).
- *Bassett v. City of Spokane*, 98 Wash. 654, 656, 168 P. 478 (1917) (“Color of title is that which is a semblance or appearance of title, but is not title in fact or in law. A claim to property under the terms of some conveyance, however incompetent to carry or pass the title, is strictly color of title.”).
- *Sengfelder v. Hill*, 21 Wash. 371, 58 P. 250 (1899); *Ball v. Clothier*, 34 Wash. 299, 75 P. 1099 (1904) (Defendant claiming under RCW 7.28.160 only entitled to setoff for value of improvements against damages, there is no independent right of recovery for damages.).

RESPECTFULLY SUBMITTED this 11th day of January, 2010.

SCHWABE, WILLIAMSON & WYATT, P.C.

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### DECLARATION OF SERVICE


I, Phillip J. Haberthur, hereby certify that I electronically mailed and mailed a copy of the foregoing RESPONDENT HUNTINGTONS' STATEMENT OF ADDITIONAL AUTHORITIES [RAP 10.8] to the following:

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via United States first-class mail with postage prepaid on the 11th day of January, 2010.

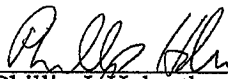
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**CERTIFICATE OF FILING**

I, Phillip J. Haberthur, hereby certify that I filed the original of the foregoing RESPONDENT HUNTINGTONS' STATEMENT OF ADDITIONAL AUTHORITIES [RAP 10.8] on the Supreme Court Clerk's Office, via email on the 11th day of January, 2010.

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